IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8156 OF 2005

Shri Lalasaheb Gopinath Chandanshive ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri Umesh Mankapure for the Applicant.
Mrs S.D.Shinde, A.P.P. for the Respondent.

CORAM : S.C. DHARMADHIKARI, J.
DATE : DECEMBER 19, 2005.

P.C.:

1. Heard Shri Mankapure appearing for the Applicant and Mrs Shinde, A.P.P. for the State. The Applicant is the accused No.2 in C.R.No.122 of 2005 registered at Vita Police Station. The offence alleged is punishable under section 302 read with section 34 of the Indian Penal Code.

2. The complainant is brother of the deceased and it is his case that there is liquor shop in which he is working in the evening. On 31st August, 2005 at about 10.00 p.m., the deceased and one Prakash Gulave came at the liquor shop. Deceased demanded amount of Rs.35/- from said Prakash. The said Prakash is said to have assured the deceased that amount will be paid next day. However, the deceased demanded the amount immediately. Said Prakash slapped the deceased and started abusing. The present Applicant is also

allegedly present at the liquor shop and he also slapped deceased. This took place in the liquor shop. Therefore, the owner of the liquor shop/hotel told all of them to go out and resolve their disputes. After sometime, it is the case of the complainant that he heard loud shouts. It is at that point of time that the complainant who was in the shop came out of the shop and found that apart from the present Applicant three others were giving fist blows to the deceased. The version of the complainant is that he thought that even he would be assaulted and beaten up and therefore, he remained inside the shop, rather he slept there throughout the night and in the morning when he was going for bath, he discovered that his brother was lying on the road. It appears, according to the complainant that the deceased was already dead at that time.

3. Upon this statement F.I.R. came to be registered as above. The Bail Application preferred by the Applicant who is arrested on 01st September, 2005 has been rejected without discussing the above aspects as also the necessary guiding principles. The chargesheet has been already filed in this case on 28th November, 2005. The Applicant has been arrested on 01st September, 2005.

4. In my view, it was incumbent upon the learned Sessions Judge to have considered the Application for bail after applying the relevant and germane factors and those more particularly laid down in the decision reported in (2005) 8 Supreme Court Cases Page 21 (State of U.P. through C.B.I. Vs. Amarmani Tripathi). The learned Sessions Judge has merely recorded the version of the complainant and has observed that there is involvement of the present Applicant in the crime. The case is based on circumstantial evidence. The only observation made is that if the Applicant is enlarged on bail, he will create hurdle in smooth proceeding of the case and there is likelihood of tampering with the prosecution witnesses.

5. In my view, the aforesaid aspects have not been substantiated by any materials. Some general observations made by the learned Judge without discussing the role of the present Applicant are not sustainable in law. No materials have been produced before me to substantiate the above apprehension. That apart, with the assistance of Mrs Shinde I have perused the statements and the other materials including Post Mortem Report. There are no injuries

apart form some injuries which are listed in column No.17. The cause of death is cardiorespiratory arrest due to haemorogic shock. In these circumstances, the following order will serve the needs of justice.

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with **C.R.No.122 of 2005 of Vita Police Station, District Sangli,** subject to furnishing a personal bond of **Rs.10,000/-** (Rupees Ten Thousand Only) with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant shall attend the concerned Police Station once in a week.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

iv) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to

delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE